

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, JULY 9, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello

Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Ms. Dede Mamiya, Land
Mr. Sam Lemmo, OCCL
Mr. Paul Conroy, DOFAW

Mr. Andrew Monden, Engineering

Mr. Keith Chun, Land
Mr. Dan Quinn, State Parks
Mr. Francis Oishi, Aquatic
Resources
Mr. Peter Garcia, DOT

OTHER

Ms. Linda Chow, Deputy Attorney General
Mr. Richard Coghlan, D-5
Mr. Steve Torkilelson, D-13
Mr. Lee Sichter, C-1
Mr. Dennis Kanahale, D-1
Mr. David Marquez, D-17
Mr. Donald Karr, D-17
Ms. Stephanie Bivens, K-2
Ms. Shamayn Bolosan-Ogawa, K-2
Mr. Miles Moby, K-2, E-1
Ms. Crystal Rose, K-4
Mr. Richard Holland, E-1
Ms. Gayle Hunter, E-1

Mr. Mike Masutani, D-2
Mr. Ed Shaw, D-3
Mr. Dale Zane, D-14
Mr. Skip Cowell, D-17
Mr. Jim Stone, D-17
Mr. Bernie Bays, K-2
Mr. Lance Fujisake, K-2
Mr. Lawrence Ahn, K-2
Mr. Craig Kuroka, K-2
Mr. David Atkin, E-1
Mr. William Aila, E-1
Ms. Georgette JoJordan, E-1

Ms. Dawn Chang, K-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item D-5: Amend Land Office Deed S-27680, Grant of Perpetual, Non-Exclusive Easement to the Kulaloa Community Association at Waiakea Homesteads, 3rd Series, South Hilo, Hawaii, TMK: (3) 2-4-07: Road Reserve.

Dede Mamiya, Administrator of the Land Division, indicated the Kulaloa Community Association at Waiakea Homesteads is requesting to amend the current lease documents by allowing construction of a gate over the easement area. The community association is making this request because at night there is a lot of vandalism and other activity along the roadside. The gate would remain open from 5:00 am to 6:00 pm daily and would be closed during the night. Ms. Mamiya recommended the Board amend Land Office Deed No. S-27,680. Grant of Perpetual, Non-Exclusive Easement by amending Item 17 of the Easement document, approving the construction of a security gate, providing vehicular access to civil defense, fire/rescue, police and medical personnel during times of emergencies and other terms and conditions that may be imposed by the Chairperson.

Richard Coghlan was present to answer any questions.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-2: Issuance of Revocable Permit to Walter D. Andrade for pasture, Waiohinu, Kau, Hawaii, TMK: (3) 6-5-06: por. of 01.

Ms. Mamiya communicated the subject state parcel abuts the C. Brewer pasture lease and due to the acreage, topography and fencing of the area, the state property was leased to the same lessee as the C. Brewer property. Previously Onipaa held the lease but upon expiration of the C. Brewer lease, Onipaa requested termination of their Revocable Permit. The C. Brewer lease was recently awarded to Walter Andrade and he is therefore requesting a revocable permit for the abutting state property. Ms. Mamiya recommended the Board authorize the issuance of a revocable permit to Walter D. Andrade covering the subject area for pasture purposes.

Mike Masutani was present.

The Board amended the Recommendation Section by adding a new subparagraph 2.H. to read as follows:

“2.h. No residential use shall be allowed.”

Unanimously approved as amended (DeMello/Yamamura).

Item D-13: Amend Board Actions of December 14, 2001 (Agenda Item D-35), April 12, 2002 (Agenda Item D-29), and June 13, 2003 (Agenda Item D-27)

Regarding the Term of the Lease for Sale at Public Auction for Resort and Golf Course Purposes, on State lands at Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-01:12 & 2-1-05:13, 16, 17, 27, 32, 46.

Ms. Mamiya reminded the Board the last time staff appeared before the Board on this subject matter was upon the completion of an arbitration process, which determined the lease rent for the new leases as well as the fair market value of the improvements. Once a Memorandum of Agreement has been finalized, Ms. Mamiya indicated staff is ready to move forward with a public auction. In the meantime the Naniloa Resort has requested the term of the lease be extended from 55-years to 65-years. In addition staff is requesting one additional rental reopening to make-up for the extra term. Ms. Mamiya went on to point out at the June 13, 2003 meeting the Board clarified that the new lease is to be auctioned pursuant to HRS §171-61 and not Act 55. She went on to remind the Board of their previous approval on a one-year rent waiver for the Naniloa lease when it was initially auctioned under Act 55. Ms. Mamiya recommended the Board amend its prior actions by increasing the term of the new lease from fifty-five years to sixty-five years and confirm that rental re-openings will occur following the expiration of the 30th, 40th and 50th years of the lease term.

Steve Torkilson came forward to testify on behalf of the Hawaii Naniloa Resort. Mr. Torkilson explained when the subject area was first auctioned the term of the lease was 55-years. At a subsequent meeting the Board approved the auction of the lease pursuant to HRS §171-61 which allowed the term of the lease to be increased to 65-years. He pointed out at both of these meetings the Board approved a one-year rent waiver. He told the Board the reasoning behind granting the rent waiver is because the lessee is required to make improvements on the property, which in turn will have an impact on the operations, and cause shut downs of some areas. Mr. Torkilson asked the Board to leave the one-year rent waiver previously approved intact.

With regards to the rent waiver, Ms. Mamiya made it known the rent waiver is meant for new leases in which they are constructing something new which would take about a year. She feels if the Naniloa would completely close down operations for a year while renovations are being done they might be able to qualify for the rent waiver.

The Board amended the Recommendation Section by adding a new paragraph 3 to read as follows:

“3. Delete the one-year rent waiver.”

Unanimously approved as amended (DeMello/Yamamura).

Item D-3: Mutual Cancellation of General Lease No. S-4288 to The Gas Company, LLC, Kealakehe, North Kona, Hawaii, TMK: (3) 7-4-20:17 fka TMK: (3) 7-4-08:22.

Ms. Mamiya confirmed that the subject lease was issued to the Gas Company in 1970. At present time the Gas Company has requested the cancellation of the lease as the site has not

been used for years and they have held on to the lease with the prospect of needing the site once again. Ms. Mamiya recommended the Board approve the mutual cancellation of General Lease No. S-4288 subject to the conditions listed in the submittal.

Unanimously approved as submitted (DeMello/Yamamura).

Item C-2: Request for Approval to Enter into a two-Year Contract with the Hawaii Wildlife Fund to Provide Services to Develop and Implement an Educational “Think Island” Program and Conduct Visitor Research at Ahihi-Kinau Natural Area Reserve and Keoneoio (La Perouse Bay).

Paul Conry, Administrator for the Division of Forestry and Wildlife, announced that in 2003 the Department applied for a grant from the Hawaii Tourism Authority (HTA) in hopes of obtaining money to fund and manage the resources at Ahihi-Kinau and Keoneoio. At the same time the Hawaii Wildlife Fund also applied for the same grant for educational efforts in the same area. To better coordinate efforts in the subject area the HTA awarded the funds to the Department with one caveat requiring that the Hawaii Wildlife Fund be subcontracted to coordinate the educational program in the subject area. Mr. Conry recommended the Board authorize the Chairperson to negotiate and execute a Contract for Services for two years in the amount of \$103,274 with the Hawaii Wildlife Fund.

Unanimously approved as submitted (Yamamura/DeMello).

Item C-1: Modification of Governor’s Proclamation Designating the Kealia Forest Reserve.

Mr. Conry appeared before the Board requesting the modification of a Governor’s Proclamation of 1920. As background information, Mr. Conroy let it be known while obtaining title insurance on several parcels of its property the landowner noted an encumbrance on one of its parcels. Currently the landowner has requested to have its land removed from the forest reserve, thereby removing the encumbrance on its property. Mr. Conry recommended the Board approve the request of Cornerstone Holdings LLC to correct the land records shown in the inclusion of TMK 4-7-01:001 within the Kealia Forest Reserve and authorize the Chairperson to process a request to the Governor to modify the 1920 Governor’s Proclamation to correct the error.

Lee Sichter a Planner with Belt Collins came forward and informed staff the correct name of the Landowner is “Cornerstone Hawaii Holdings LLC.”

The Board amended the “Landowner” to read as follows

“Landowner: Cornerstone Hawaii Holdings LLC”

Unanimously approved as amended (Agor/DeMello).

Item D-14: Sale of Remnant Ditch Right-of-Way to George Kaekulani McMillan-Gordon and Farm Family Partnership, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-76: por. 46.

Ms. Mamiya disclosed the applicant is proposing to purchase an abandoned ditch that runs through the applicant's property. The ditch slightly abuts several properties and those owners were contacted to inquire if they would like to purchase the parcel. All of the abutting owners replied they had no interest in purchasing the subject parcel. Ms. Mamiya recommended the Board authorize the subdivision and consolidation of the subject remnant and the sale of the subject remnant to the applicant.

Dale Zane of Goodsill Anderson representing the applicant confirmed that the address listed on staff's submittal is correct.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-1: Forfeiture of General Lease No. S-5368, Aloha First, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-10: 80, 96, 97, 98, 99.

Ms. Mamiya communicated the lessee is in default for its failure to post the required liability insurance policy. The lessee accepted a notice of default on March 19, 2004 with a cure period to expire on May 18, 2004. Ms. Mamiya made it known she has been in communication with the lessee and he has two brokers who have been trying to help him obtain the necessary insurance.

Dennis Kanahele representing Aloha First asked the Board to take a look at the unique situation, which brought about the formation of this village. For the record he noted the village relies 80-90% on government subsidies and this in turn might hamper their efforts in obtaining insurance coverage. Mr. Kanahele told the Board in going over his lease there is no reference stating that the insurance policy coverage must be for one million dollars. He asked the Board if they would reduce the amount of his coverage as it might help him to secure a policy. Mr. Kanahele mentioned several companies he has contacted in hopes of obtaining the necessary insurance coverage. Mr. Kanahele went over the first draft of a Master Plan for their village. He told those present he is really sincere in working with the system but he has no intention of leaving the village as they are planted in the ground. When asked by the Board how long it would take to secure liability insurance, Mr. Kanahele said he was unsure but he would keep the Board informed on his progress.

Motion to Defer for Sixty Days.

Unanimously approved to Defer (Yamamura/DeMello).

Item D-19: Amendment to Allow Subleasing under General Lease No. S-5681, The Harry and Jeanette Weinberg Foundation Incorporated, Lessee, Kapalama, Honolulu, Oahu, TMK: (1) 1-5-042:002.

Ms. Mamiya informed the Board the Weinberg Foundation's holding company Honolulu Limited owns the former Xerox building and it was their intention to lease out the subject parcel to the lessees of the building. Presently Walt Disney Studios has requested use of the former Xerox building for one year in connection with the filming and production of the television series "Lost." Ms. Mamiya recommended the Board amend General Lease No. S-5681 to allow subleasing of the premises for a one-year period.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-20: Sale of Lease at Public Auction for Commercial (Parking) Purposes, Kapalama, Honolulu, Oahu, TMK: (1) 1-5-042:002.

Ms. Mamiya pointed out this is the same parcel as item D-19. This action is meant to allow the subject parcel to go out to public auction. She believes the Walt Disney Studios has no objection to the parcel going out for public auction. Ms. Mamiya recommended the Board authorize the sale of a lease at public auction covering the subject area for commercial purposes.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-17: Appeal of Disqualified Applicants of the Request for Qualifications/Request for Proposals for potential developers of the Kealakehe Master-Planned Mixed-Use Development Project at Kealakehe, North Kona, Island of Hawaii, TMK: (3) 7-4-08: 3, 40, 41, 46, 50 and 71.

Ms. Mamiya indicated the Board approved the issuance of a Request for Qualifications (RFQ)/Request for Proposals (RFP) to solicit developers for the Kealakehe Master Plan. She briefly went over the two-step selection process. Ms. Mamiya noted a selection committee went over the Request for Qualifications. All those that qualified moved on to the next phase. After the committee reviews the plans it will be brought to the Board for approval.

Keith Chun, Planning and Development Manager with the Land Division, told the Board the selection committee looked at the criteria set forth in the Request for Qualifications. The criteria included the submission of materials that established development experience, a plan that included a marine component and the ability to show the financial capability of carrying out the proposed plan. Mr. Chun stated each proposal was reviewed according to the criteria set forth and not against another competing plan. He also informed the Board a developer's briefing on the RFQ/RFP process was held at which time the developers were able to ask questions.

Skip Cowell President of the Kealakehe Ahupua'a 2020 and President of the Hawaii Association of Conservation Districts came forward to testify. Mr. Cowell told those present his group looked at the Master Plan with the thought of what kind of project they could do which would allow the community to give their input and express their desires. Mr. Cowell told the Board his organization may have been flawed in their approach but they have secured

legal help prior to their submission of the RFQ and all they are asking for is a level playing field.

David Marquez conveyed that their group is a community development organization proposing to become self-sustainable. He indicated in submitting the RFQ he hoped there was enough information to make it possible for his organization to move onto the next step. Mr. Marquez went on to give background information on other projects undertaken by John Currow and with McWeeney. He went on to speak of the financial capabilities of the Royal Bank of Canada. In Mr. Marquez's opinion he feels they have established a qualified team that met the qualifications set forth by the Department. Mr. Marquez also spoke of the impact on the community and the benefits it could provide to the native Hawaiians and others. With regards to the Deep Draft Harbor he believes if we can make it a port for cruise vessels it would create a positive impact on the community. He told the Board if he is able to move forward to the RFP process his organization would be able to provide more detailed information with regards to the financial capability of his backers.

Jim Stone counsel for D.R. Karr Company, Limited, appeared before the Board to provide testimony. Mr. Stone believes there were some miscommunications in the process. He feels there is some overlapping in the description on what the Department is asking in the qualification process and whether or not it is a step in the process towards a Request for Proposals process. Mr. Stone felt some of the details asked in the RFQ process would be more appropriate if asked in the RFP stage. If the Board provides an opportunity for D.R. Karr Company, Ltd to reenter the process and submit further information they are interested in doing so.

Donald Karr told the Board when he received the documents from the department he saw the technical side of the work but he could not answer all of the questions. He believed he could ignore step one of the process and immediately jump to step two, which he now realizes, was an unwise decision. He asked the Board for another opportunity to reenter into the process and be able to submit a Master Plan for the harbor. Mr. Karr went on to explain he was caught up on the concept of a Master Plan and was not able to reach a point in which he could build it. He believes this was his error.

The Board asked Mr. Chun if there was anything he heard here today which he believes would change the committee's decision with regards to the qualifications of the two companies. Mr. Chun replied no. He told the Board in all fairness the committee did receive applications that fulfilled the requirements and are able to move to the next stage.

Unanimously approved as submitted (DeMello/Yamamura).

Item K-2: Enforcement File No. OA-04-28 Regarding Newtown Estates Community Association (NECA) Land, 98-456 Kaahele Street, Aiea, Oahu, 96701, TMK: (1) 9-8-073:003.

Sam Lemmo, Administrator for the Division of Conservation and Coastal Lands, pointed out the subject parcel is a greenbelt that surrounds Newtown Community Estates Association

(NECA). In January 2004 the Department received a complaint regarding the construction of an unauthorized fence and unauthorized construction of roads and a private ATV park located at the end of Hapaki Street. A second complaint was received on March 30, 2004 and upon an inspection by staff several unauthorized activities were observed. A Cease and Desist Notice and Order were given to NECA, Mr. Bivens and Mr. Ahn on March 30, 2004. Staff believes NECA should be fined as they are the landowners, Mr. Bivens should be fined as he was the one completing the unauthorized work and lastly Mr. Ahn is included in the fines as he helped build the fence. Mr. Lemmo noted as of today, all structures were removed the only outstanding item is the grading. Mr. Lemmo recommended the following fines according to their culpability: Mr. Ahn - \$1,758.00, Mr. Bivens \$9,758.00 and NECA \$1,758.00. He also recommended Mr. Bivens submit a land restoration plan to restore the land back to its original condition.

Bernie Bays representing Rodney and Stephanie Bivens appeared before the Board. Mr. Bays communicated in the process of building their home the Bivens contacted the property manager, Mr. Tocman to seek permission to grade and landscape the area in the greenbelt to the rear of their lot. The property manager gave them his approval. The Bivens graded the area to remove vegetation and install a temporary irrigation system in order to get the grass to grow. Mr. Bays spoke of a problem at the end of the cul-de-sac with people loitering, littering and other undesirable activities including late night parting. He informed the Board the neighbors in the area all got together and determined it would be desirable to construct a fence at the end of the cul-de-sac in order to discourage any undesirable activities. Mr. Bays went on to say his clients then approached then property manager Howard Tocman and got his approval for the construction of this fence but they did not receive permission for the other temporary structures they placed on Newtown property to the rear of their lot. He told the Board his client was unaware the Newtown property was on the Conservation District and believed the only approval they needed was from the Newtown property manager. Upon learning this fact, his clients removed all structures including the fence. In order to correct the situation, Mr. Bays proposes to do the following: Select and pay for a licensed civil engineer to determine if the grading is hazardous and provide a report to the State; hire someone to develop and implement a land restoration plan which will be submitted and approved by the Department; and provide the necessary water and irrigation to start the irrigation in the subject area. In light of the monetary cost associated with the proposed remediation, Mr. Bays asked the Board to reduce the Bivens fine to \$1,000.

Stephanie Bivens came forward to apologize to the Board for any problems they may have caused. She spoke of their efforts to curb the undesirable activities in the area and their attempts to beautify the area. Mrs. Bivens told the Board of a conversation she was present at in which Mr. Tocman told her husband they could do whatever they wanted in the area behind their home as it was a common practice to make the area look nice as long as they did not build on the land. In closing Mrs. Bivens told the Board all she was trying to do was to make the community a better and safer place for everyone.

Lance Fujisaki attorney for Newtown Estates came forward to provide testimony. Mr. Fujisaki spoke on two issues the fence near the street and a two-acre area not visible from the street, which was previously a reservoir. Mr. Fujisaki made the Board aware of an affidavit

from Howard Tocman, which states he did not give Mr. Biven permission to construct a fence on the vacant parcel. He feels there was some question as to who owned the subject parcel and Mr. Tocman told the Bivens that they would need to secure permission from the landowner prior to the construction of the fence. With regards to the grading of the area above Hapaki Street, Mr. Fujisaki noted there was no evidence to show Mr. Tocman gave the Bivens permission to grade the area. Addressing the issue that it is typical for Newtown Estates residence to care for the greenbelt area, he notes that no other resident has done major grading and damage to the land similar to this violation before the Board today. With regards to the fines imposed to Newtown Estates, Mr. Fujisaki asked that the fines be dropped because Newtown did not give the residents permission to construct the fence and with there being approximately 2532 units the NECA can not be aware of everything that is constructed. Upon knowledge of the violation, Newtown removed the fence as soon as possible. Addressing the issue of the land restoration plan the Board is requesting the Bivens to submit, Mr. Fujisaki requested that NECA do the work and seek reimbursement from the Bivens. But if the Board elects to have the Bivens perform the work he would like the contractor to be licensed and insured and be approved by Newtown. Mr. Fujisaki asked that all remediation plans be approved by Newtown before work begins.

Shamayn Bolosan-Ogawa Executive Director of Newtown Estates made it known they have allowed the residents a fifteen foot buffer behind their homes to clear as a fire prevention precaution. The Newtown Association believed since they were working with Wayne Ching from the Department they did not need to secure any permits for the clearing of the greenbelt area. Ms. Bolosan-Ogawa informed the Board they would be working with the Department to secure blanket permits which would allow future clearings of the area behind the homes.

Board Member Yamamura question Ms. Bolosan-Ogawa if residents in Newtown Estates were under the impression if their homes abut State land they are able to digress and push their boundary back fifteen feet. Ms. Bolosan-Ogawa answered the question by saying their covenant states residents are not allowed to touch the area behind their home but after meeting and talking with Wayne Ching the Association sent out a letter telling residents they could care for the area behind their home.

Mr. Fujisaki told the Board Newtown is requesting that all fines levied against them be dropped but if the Board chooses to proceed with the fines he feels Newtown fines should be lowered similar to what was done for Mr. Ahn.

Lawrence Ahn explained to the Board he had a problem with staff's submittal stating the construction of the fence was a willful violation. He noted the fence was constructed due to the drug use, trash, loitering and beer drinking at the end of the street. He made it known Mr. Bivens informed him he received permission from Mr. Tocman to construct the fence. Mr. Ahn wanting to make sure everything was in order contacted Mr. Tocman to discuss the construction of the fence. Mr. Tocman told him he had no problem with the construction of the fence as long as they followed Newtown's guidelines (i.e. height and color). Secondly Mr. Ahn made everyone aware that he did not participate in the grubbing and grading of the subject area as he does not have the possible equipment. All Mr. Ahn confirmed was his

participation in the building of the fence. In closing Mr. Ahn asked that his fines be dropped due to receiving verbal approval from Mr. Tocman for the construction of the fence.

Miles Moby came before the Board and expressed his support for the Bivens and Mr. Ahn.

Craig Kuraoka a Newtown resident spoke of the positive effects brought on by the construction of the fence. He told the Board when the fence was removed the questionable activity in the area continued. He spoke of his frustration in dealing with Newtown to solve the activities going on at the end of Hapaki Street.

After hearing today's testimony Mr. Lemmo told the Board he is concerned with the violations that have taken place on the subject parcel. But he is willing to release Mr. Ahn from the grubbing and grading violation. He feels Newtown Association should accept a bigger burden as they are the landowner and ultimately they are the responsible party. As for Mr. Bivens he stands by the fines imposed.

Lawrence Biven asked the Board if the fines could be reduced to half the amount. He told the Board he was just trying to do something good for his community.

The Board amended the Following:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board find ~~[the landowner]~~ NECA and Mr. Bivens in violation of Chapter 183C HRS and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

- 1. That NECA, ~~[Mr. Ahn,]~~ and Mr. Bivens violated the provision of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in ~~[two (2)]~~ one (1) instance by failing to obtain the appropriate approval for alleged, Unauthorized construction of the wooden fence ~~[and the alleged, unauthorized grubbing and grading located]~~ at the end of Hapaki Street on NECA lands within the Conservation District. The landowner NECA, ~~[Mr. Ahn,]~~ and Mr. Bivens are each fined ~~[\$1,333.00]~~ \$1,000 for ~~[two (2)]~~ one (1) Conservation District violations;**
- 2. That Mr. Bivens violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in seven (7) instance by failing to obtain the appropriate approvals for: 1) animal husbandry; 2) six (6) structures (four dog kennel/houses, goat shed, 7 x 10 foot shed); 3) dirt road (located at the northeast end of the subject parcel); 4) constructed metal aluminum fence (around the goat enclosure); 5) construction materials; 6) a grubbed and graded area on the hillside of the NECA property; and 7) landscaped improvements (irrigation system, 21 planted palms, 4 planted banana trees) to occur on privately-owned lands, within the Conservation District. Mr. Bivens is fined a total of ~~[\$8,000.00]~~ \$4,000 ~~[for seven (7)]~~ [for these] Conservation District violations;**

3. **~~[Mr. Ahn,]~~ Mr. Bivens, and the landowner NECA are each fined an additional ~~[\$425.00]~~ \$637.50; total \$1,275.00 for administrative costs associated with the subject violations located at Hapaki Street;**
4. **The NECA, ~~[Mr. Ahn,]~~ and Mr. Biven shall pay all fines (~~[Mr. Ahn – \$1,758.00]~~ \$5,637.50, NECA ~~[\$1,758.00]~~ \$1,637.50) within thirty (30) days of the date of the Board’s action.**
5. **That Mr. Bivens shall submit a land restoration plan to restore the land back to its original condition. Mr. Bivens shall submit the restoration plan within sixty (60) days. Upon approval of the restoration plan by the Chairperson of the DLNR or his authorized representative, Mr. Bivens will implement the plan within ninety (90) days. This plan shall include the removal of all unauthorized structures;**

Unanimously approved as amended (Yamamura/DeMello).

The Board recessed at 11:45 am and reconvened the meeting at 11:50 a.m.

Item K-4: Enforcement File No. OA-04-32 Regarding Unauthorized Construction Subsequent to the Three Year Completion Deadline, Grading and Grubbing of Adjacent Lands, Landscaping on Hawaii Baptist Academy Lands, Located at Subject Parcel TMK: (1) 2-2-031:012, 2505 Pali Highway, Nuuanu, Oahu and (1) 2-2-022:003, 2429 Pali Highway, Nuuanu, Oahu.

Mr. Lemmo indicated in March 2004, the applicant submitted an application for construction of a proposed swimming pool. Upon careful review of the permit staff realized the three-year construction deadline had expired. Based on this information staff went for a site visit to confirm construction was not completed. At the site visit staff also became aware of grubbing and grading on the adjacent Hawaii Baptist site. Other issues brought about by the site visit was the area above the master bedroom and whether it constitutes living area and lastly a unfulfilled condition from a previous meeting which stated the applicants would submit a long-term preservation plan to the State Historic Preservation Division. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules and is subject to the conditions listed in staff’s submittal.

Crystal Rose attorney representing the landowner indicated her clients have reached an agreement with Hawaii Baptist Academy with regards to the subject violation and they will bear all fines imposed by the Board and accept responsibility for their actions. Ms. Rose noted although her clients do not agree with all of the representations in staff’s report, as there are numerous mitigating factors, her clients have taken responsibility for the violations. Ms. Rose noted her agreement with staff’s recommendation but she feels some of the fines are duplicated (grubbing and grading included in landscaping). In closing she asked for a reduction in the fines imposed upon her client.

The Board amended the following:

- “1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in [~~five~~] four instances by failing to obtain the appropriate approval for construction after October 30, 2002, Unauthorized grading and grubbing of adjacent lands, unauthorized landscaping of adjacent lands, [~~unauthorized storage of curbstones on adjacent lands~~] and noncompliance of permit conditions. The alleged is fined a total of [~~\$10,000~~] \$8,000 for [~~five~~] four Conservation District violations.**
- 3. The landowner shall pay all fines (total [~~\$11,00.00~~] \$9,000 within ninety (90) days of the date of the Board’s action;”**

The Board added the following condition:

- “13. That the applicant has until September 30, 2004 to complete construction of the single family residence.”**

Unanimously approved as amended (Yamamura/DeMello).

Item E-1: Approval for Interim Concession for Makua Lani to Operate Kayaks from Makua Sections of Kaena State Park and Approval to Authorize a Public Process for a “Regular” Permit.

Dan Quinn Administrator for State Parks communicated Mauka Lani which is a non-profit 501-C3 organization is requesting a permit to operate a kayak concession at Kaena State Park. The operation would take paying guests out for a short ride, snorkel then come back to the beach for beach activities. State parks propose to award an interim month-to-month concession, which will automatically expire when the public process concludes and a concessionaire is chosen. The interim permit would limit the number of guest to 28 per day and 15 kayaks. Only one negative comment was received from the Wild Dolphin Foundation, which believed that kayaks seem to have a negative impact on dolphins and akule nursery and spawning grounds in the bay. Mr. Quinn went over the various conditions of the permit. Mr. Quinn recommended the Board approve an interim month-to-month concession to Makua Lani not to exceed a one year period, which will automatically expire when the pubic process concludes to determine the “regular” concessionaire. Mr. Quinn further recommends a public process to award a kayak an beach activities concession at the Makua Beach section of Kaena Point State Park for a maximum of 28 guests and 15 kayaks per day.

Miles Moby of Makua Lani went over some information he handed to the Board members, which gave an overview of their company. Mr. Moby communicated the lively hood of approximately twenty local Hawaiians are on hold until the Board makes a decision on this matter.

David Atkin of Makua Lani proposed two changes in the permit conditions. He asked the Board to impose stricter guidelines in the permit. He brought attention to condition eight

under Protection of Natural and Cultural Resources. Mr. Atkin believes this rule goes way beyond the legal justification based on any authority or law and goes beyond what is required in the Marine Mammal Protection Act. He also feels the condition is somewhat vague. His company's goal is to provide a sensitive and respectful opportunity to view the dolphins in their natural habitat. Mr. Atkin acknowledged the staff of Makua Lani and its guest would not approach, pursue or chase the dolphins. He notes Makua Lani chose to use kayaks instead of motorized vehicles as they were found to have a detrimental impact on the dolphins. Mr. Atkin asked that the use of motorized vehicles be banned. Addressing a condition eight under "Protection of Natural and Cultural Resources" Mr. Atkins feels there is a problem with this condition because wildlife viewing can not take place if you are constantly going in and out of the water. He made it known dolphins are habitual creatures and they voluntarily choose to approach humans. He did assure the Board that his guides and guest will not attempt to approach the dolphins within 50 meters. Instead of the above rule, Mr. Atkins proposes to leave the area if the dolphin approaches with its calf. He also proposes to use the area from 7:00 a.m. till 12:00 noon to allow the dolphins time to rest. An additional condition would allow the permittee to view the dolphins in a particular area of the bay for no more than thirty minutes before they would need to leave the area and not return for an hour. He asked the Board was to limit the amount of people on the tour to fourteen people with a limit of two tours per day. Mr. Atkins last request was to ask the Board to allow his company to operate on non-holiday weekends in the morning and if there is a certain amount of people on the beach (number to be set by the Department) his company would pack up and leave.

Richard Holland Executive Director of Makua Lani testified. He told the Board the intention of his tour is to take the Japanese tour guest to a sacred spot, Makua and re-enact the way of the ancient people. He asked the Board to reconsider condition eight and allow operations on the weekends.

William Aila spoke to the Board on two issues. First he asked the Board to embark on this concession agreement with Makua Lani and noted his approval with one caveat. Mr. Aila asked that no other land or ocean based commercial activity take place in this area. Secondly he feels this concession agreement is an opportunity to generate revenue. Lastly Mr. Aila asked that all cultural activities be undertaken in a sensitive nature.

Gayle Hunter spoke in opposition of a concession permit to Mauka Lani and spoke of her wish that the area be turned into a Conservation area. Ms. Hunter feels the Division of Conservation and Resource Enforcement is already over burdened with other tasks and we shouldn't impose additional responsibilities on them. She also spoke of her concern with the parking situation and the increase in trash that could result from more people using the area. Ms. Hunter made it known there is no cell phone coverage in this area and questions what will happen when first aid is required. Ms. Hunter ended by saying she is against any commercial concession in the area.

Georgette Jojordan came forward and spoke in opposition of the issuance of an interim permit to Makua Lani. Instead she wishes the Department would continue with the public process and solicit community input. Ms. Jojordan questioned why Makua Lani has not applied for a general excise license until June 04 since they have been operating for the last ten years. She

asked the Board to allow Makua Lani to launch from county lands and not get involved in a concession permit.

The Board amended the following on the Permit Application:

- 1. The Maximum Daily Number of Guest from 24 to 28.**
- 2. The Monthly Permit/Concession Fee to \$5.00 Daily Per Guest.**

Unanimously approved as amended (Yamamura/DeMello)

Item M-1: Amendment of the Restaurant and Lounge Concession Lease, DOT-A-92-18, Host International, Inc., Honolulu International Airport, Oahu, TMK: (1) 1-1-03-1P.

Unanimously approved as submitted (Yamamura/DeMello).

Item K-1: Conservation District Use Application (CDUA) ST-3176, Statewide Undersea Fiber Optics Telecommunications System by Sandwich Isles Communications, Inc., Multiple Locations on Kauai, Oahu, Molokai, Big Island, and Maui.

Mr. Lemmo recommended the Board approve this application for a statewide submarine fiber optic cable project (excluding Sandy Beach), subject to the conditions listed in staff's submittal.

Dawn Chang appeared on behalf of Sandwich Isles Communications, Inc. She made it known there is one outstanding issue which involves Sandy Beach in that there is an overlapping of the land classification, part being Conservation land and other parts being a Special Management Area (SMA). Ms. Chang proposed that Sandy Beach be used as a temporary drill site (location of the drill that will lay the undersea cable). The only structure will be a manhole located in the road right-of-way. She asked the Board to approve the Conservation District Use Application (CDUA) for the seven landing sites contingent upon obtaining the SMA for Sandy Beach. She assured the Board there would be no construction on the site until all permits are obtained. Ms. Chang anticipates construction to start in about a year.

The Board amended the Recommendation Section by:

- 1. Adding an additional bullet point to recommendation 8**
 - During the operation to connect the submarine fiber-optic cable to the landing site, care would be taken to avoid excess slack, which could entangle a humpback.**

Unanimously approved as amended (Yamamura/DeMello).

Item K-3: Request for Board of Land and Natural Resources to approve Chairman to appoint a Hearing Officer for Contested Case HA-04-10, Continental Pacific, Subject Parcel TMK: (3) 2-8-007:001.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-4: Issuance of Revocable Permit to Charles M. Kong and Victoria MacPhee Kong, for Pasture Purposes, at Ahualoa Homesteads, Hamakua, Hawaii, TMK: (3) 4-5-11:07.

The Board amended the Recommendation Section by adding a new subparagraph 2.H. to read as follows:

“2.H. No residential use shall be allowed.”

Unanimously approved as amended (Yamamura/DeMello).

Item D-18: Results of the Public Auction Sales of State of Hawaii Leases on the Island of Oahu, Held on June 30, 2004

No Action.

Item D-6: Consent to Assignment of Grant of Easement Identified by General Lease No. S-5652, Richard A. Riley and Carol H. Riley, Assignors, to Christopher R. Brigham, Trustee and Cathy V. Brigham, Trustee, Assignees, Kaneohe, Koolaupoko, Oahu, TMK: 4-4-18:68 seaward.

Item D-7: After-the-Fact Consent to a Revocable Permit No. 26 Between Department of Business, Economic Development and Tourism and Oahu Productions, LLC for Lands formerly under Governor’s Executive Order No. 3450, Kapahulu, Oahu, TMK: (1) 3-1-42: por. of 9.

Item D-8: Final Approval of a Land Exchange between the State of Hawaii and the Department of Hawaiian Home Lands, for State Land at Maili, Waianae, Oahu, TMK: 8-7-10:7 and Hawaiian Home Lands at Hoolehua and Palaau, Molokai, TMK: 5-2-07:1, 5-2-15:1, 46, 53, 54 & 55; 5-2-30:28 and Set Aside to the Department of Education for School and Allied Purposes.

Item D-9: Acquisition of Private Lands and Set aside to Department of Education for a new elementary school in the Maui Lani subdivision, Wailuku, Maui, TMK: (2) 3-8-07:131 por.

Item D-10: Resubmittal: Forfeiture of General Lease No. S-4913, Arnold P. Spencer and Corinne A. Versola-Spencer, Lessees, Maunalaha Homesites, Opu, Makiki, Oahu, TMK: 2-5-24:31.

- Item D-11:** Rescind Prior Board Action of May 14, 2004, Agenda Item No. D-9 Consent to Assign Grant of Easement Identified by General Lease No. S-4558, Harry Fong and Gertrude Fong, Assignors, to Sheldon J. Poaha, Kealakekua, Kravis & Louis, LLC and Consent to Assign Grant of Easement Identified by General Lease No. S-4558, Harry Fong and Gertrude Fong, Assignors, to Kealii J. Haverly and Jennifer K. Haverly, Assignees, Hauula, Koolauloa, Oahu, TMK: 5-4-07:63.
- Item D-12:** Issuance of Right-of-Entry Permit to Helber Hastert & Fee, Planners, Inc., Phillip L. Bruner, and Char & Associates to Conduct a Cultural Resource Survey for a proposed Naval Computer and Telecommunications Area Master Station; Waikele, Ewa, Oahu; TMK's: (1) 9-4-012: pors. 03 & 11.
- Item D-15:** Amend Grant of Perpetual, Non-Exclusive Easement (LOD No. 28,589) to County of Hawaii for Pedestrian and Bicycle Purposes, Kealakehe, North Kona, Hawaii, TMK: (3) 7-4-21: por. 14.
- Item D-16:** Rescind Prior Board Action of May 23, 2003 (Agenda Item D-12) Issuance of Revocable Permit for Commercial Purposes to 4Digital, Inc., Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-50:79.

Unanimously approved as submitted (Yamamura/DeMello).

- Item F-1:** Request for Approval to Enter into Two New Project Agreements with the Research Corporation of the University of Hawaii for the Following: 1) Aquatic Invasive Species Project (9/1/04-9/31/05) and 2) Ulua Tagging Project (9/1/04-6/30/05).

Unanimously approved as submitted (Yamamura/DeMello).

- Item L-1:** Approval for Award of Construction Contract – Job No. G17CK11A, Lihue-Hanamaulu (Pu'u A'ahoaka) Exploratory Well, Wailua, Kauai.
- Item L-2:** Permission to Hire Consultants for DLNR CIP Projects.
- Item L-3:** Approval for Award of Construction Contract – Job No. G55CM18A, Wailuku (Iao) Deep Monitor Well, Wailuku, Maui.
- Item L-4:** Certification of Election and Appointment of Olinda-Kula Soil and Water Conservation District Directors.
- Item L-5:** Certification of Election and Appointment of Central Maui Soil and Water Conservation District Directors.

Item L-6: Certification of Election of Kona Soil and Water Conservation District Directors.

Unanimously approved as submitted (Agor/DeMello).

Item K-5: Request for the Board of Land and Natural Resources to Delegate Authority to the Chairperson to Process a Category II Permit for Kuhio Beach Small-Scale Beach Nourishment Project Kuhio Beach, Waikiki, Honolulu District for Beaches fronting TMKs (1) 2-6-001:008, (1) 2-6-001:004, (1) 2-6-001:003 (and Submerged Lands).

Unanimously approved as submitted (Yamamura/DeMello).

There being no further business, Chairperson Young adjourned the meeting at 3:15 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources